IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8933 of 1992
with
SPECIAL CIVIL APPLICATION No 8934 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SURENDRANAGAR JILLA SAHAKARI DUDH UTPADAK SANGH
Versus
POPATLAL V PATEL

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Appearance:
1. Special Civil Application No. 8933 of 1992
MR ND NANAVATI for Petitioner
MR GM JOSHI for Respondent

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CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 06/09/2002

ORAL JUDGEMENT

By filing these petitions under Article 227 of the Constitution, the petitioner has challenged common

Award and Order dated October 19, 1991, rendered by the Labour Court, Surendranagar, in Reference (LCS) No.117/89 and Reference (LCS) No. 118/89, by which the petitioner is directed to reinstate the respondent of each petition in service with 25% of back wages.

2. The respondents were employed as Clerks by the petitioner. They had continuously served the petitioner for three years. However, their service were terminated abruptly on July 23, 1984, without following the provisions of the Industrial Disputes Act, 1947 ("the Act" for short). Therefore, each of them had raised dispute regarding legality of termination of services. On failure of conciliation proceedings, the Assistant Labour Commissioner, Surendranagar, had referred two matters seperately to the Labour Court for adjudication, which were numbered as noted above. The workmen had filed their Statements of Claims, to which reply was filed by the petitioner. On appreciation of evidence adduced by the parties, the Labour Court held that the petitioner had committed breach of provisions of Section 25-G of the Act and, therefore, action of terminating services of the respondents was illegal. It was found by the Labour Court that though during the interregnum period each respondent was gainfully employed, the salary received by them was not equivalent to the salary which was paid to them by the petitioner. Under the circumstances, by the impugned Award the Labour Court has directed the petitioner to reinstate both the workmen in service with 25% of back wages.

3. The learned counsel for the petitioner submitted that the petitioner had not committed breach of provisions of Section 25-G of the Act before terminating the services of the two workmen and, therefore, the finding recorded by the Labour Court to the effect that the provisions of Section 25-G of the Act were not complied with by the petitioner, should be set aside. It was claimed that the petitioner had offered compensation to the workmen, but the workmen had refused to accept the same and, therefore, in any view of the matter, direction given by the Labour Court to the petitioner to pay 25% of back wages, should be set aside.

4. I have considered the submissions advanced at the Bar and the record of the case. So far as the respondent in Special Civil Application No. 8934 of 1992 is concerned, the Court had passed following order on February 12, 1993 :

"Learned counsel Mr. G.N.Joshi states that he had

> instruction to appear on behalf of the respondent-workman, but before the petition was placed for preliminary hearing on December 17, 1992, the respondent-workman has died. We have no reason to disbelieve the aforesaid statement. In view of the aforesaid statement, ad-interim relief granted earlier stands vacated."

5. A bare reading of the above-quoted order makes it evident that the respondent has expired and the interim relief which was granted in the said petition was vacated on February 12, 1993. The plea that the finding recorded by the Labour Court to the effect that the petitioner had committed breach of provisions of Section 25-G of the Act is not well-founded and should be set aside, has no merits. This point has been dealt with in detail by the Labour Court in paragraphs 9 & 10 of the impugned Award. The petitioner had produced seniority list at Exh.16, wherein seniority of 18 Clerks employed by it was indicated. The names of the two workmen were shown at serial Nos. 15 & 17. The petitioner could not inform the Labour Court as to how the cases of the two Clerks, who were placed at serial Nos.16 & 18 in the seniority list, were dealt with by it. Further, two other persons, namely, Mr. Salim and Mr. Vadgama, were employed as Clerk after services of two workmen concerned were dispensed with. Thus, the finding which is recorded by the Labour Court to the effect that the petitioner had not complied with the provisions of Section 25-G of the Act, is based on the evidence on record and not liable to be interfered with in the present petition, which is filed under Article 227 of the Constitution. As it was found by the Labour Court that provisions of Section 25-G of the Act were not complied with by the petitioner, the Labour Court was justified in directing the petitioner to reinstate the two workmen in service and, therefore, the said direction is hereby upheld.

6. Coming to the question of back wages, it is found that the respondent in Special Civil Application No. 8933 of 1992 was employed in Mid-Day-Meal Scheme, where he was paid salary of Rs. 200/-per month; whereas the salary which was paid by the petitioner to him was Rs. 360/-per month. Because of illegal action of the petitioner in terminating his services, the respondent in Special Civil Application No. 8933 of 1992 has suffered monetary loss. It could not be established by the petitioner that over and above receiving the salary while serving in the Mid-Day-Meal Scheme, he was gainfully employed elsewhere. Having regard to the facts of the case, the direction given by the Labour Court to the

petitioner to pay 25% of back wages to the said respondent, cannot be regarded as arbitrary or illegal and, therefore, the same is also not liable to be interfered with in the present petition. On the same analogy, the direction given by the Labour Court to the petitioner to pay 25% back wages to the respondent in Special Civil Application No. 8934 of 1992 also will have to be upheld, with a clarification that he having expired, his heirs would be entitled to receive the amount of back wages.

For the foregoing reasons, both the petitions fail and are hereby dismissed. Rule in each petition is discharged with no order as to costs.

(J.M.Panchal,J.)

(patel)